

June 2022

Economic Affairs Interim Committee
Jameson Walker, Legislative Attorney

SJ 31: TIER INCREASE ANALYSIS

BACKGROUND

Section 16-12-223, MCA, is unclear on when a cultivator may "tier-up" during the moratorium—at annual renewal or at their discretion.

ANALYSIS

In its February hearing and subsequent letter to the department, the Economic Affairs Interim Committee maintained that section 16-12-223, MCA, allowed a qualifying entity to increase tiers at the licensee's discretion. In order to resolve the issue to remove all doubt, the committee could potentially insert that a qualifying cultivator could increase tiers "at any time" at the cultivator's discretion. To officially reiterate that the EAIC maintained that section 16-12-223, MCA, already allowed for this process, a preamble could establish that the legislature's position is merely to clarify.

RECOMMENDATION

Amend 16-12-223(1)(e)(iii) and provide a preamble:

(iii) Between January 1, 2022, and June 30, 2023, a cultivator may at any time, increase its licensure level by more than one tier at a time, up to a tier 5 canopy license, without meeting the requirements of subsections (1)(e)(i)(A) and (1)(e)(i)(B).

Preamble:

WHEREAS, during the 2021-2022 interim, the Economic Affairs Interim Committee received testimony relating to the interpretation and implementation of the Montana Marijuana Regulation and Taxation Act. Specifically, the committee received testimony that section 16-12-223, MCA, only allowed qualifying marijuana cultivator licensees to increase production tiers at the licensees' renewal and not at the licensee's discretion. The committee disagreed with this interpretation and provided its analysis. The issue was resolved to the committee's satisfaction.

WHEREAS, this bill amends section 16-12-223, MCA, only to remove all existing doubt whether the Legislature intended to allow a qualifying cultivator licensee to increase production tiers at their discretion.

Notes: This section will need an immediate effective date, otherwise the amendment will be moot. An additional consideration is that based on the timing of regular annual renewals, "grandfathered" licensees may have already tiered up to tier 5 before passage of the cleanup bill, so few licensees may be able to take advantage of this.

Alternatively, the committee can strike 16-12-223(1)(e)(iii), MCA entirely. If the committee chooses to strike the language regarding tier increases, an immediate effective date is not necessary.

COMMITTEE OPTIONS

Option A: Amend 16-12-223, MCA.

Option B: Strike 16-12-223(1)(e)(iii)

Option C: Include a "whereas" clause to signify legislative intent.

Option D: Combination of A, B, C.

Option E: Leave as is.